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State of North Carolina
Department of Natural Resources and Community Development
Division of Environmental Management
512 North Salisbury Street Raleigh, North Carolina 27611

James G. Martin, Governor
S. Thomas Rhodes, Secretary

Air Quality Section
April 16, 1986

R. Paul Wilms
Director

Mr. Bruce P. Miller, Acting Chief
Air Programs Branch
Air, Pesticides, and Toxics Management Division
United States Environmental Protection Agency
345 Courtland Street
Atlanta, Georgia 30365

Subject: North Carolina Air Permits
Federal Enforceability

Dear Mr. Miller:

Reference the attached letter from Mr. William D. Anderson, Assistant Regional Counsel for EPA-Region IV, it is our understanding that a revision of North Carolina's Air Quality Permitting Program may assist EPA in resolving the longstanding issue of the federal enforceability of permits issued pursuant to North Carolina General Statute 143-215.108 and Title 15 North Carolina Administrative Code Chapter 2H.0600 et seq. Accordingly, effective immediately, all Air Quality Permits issued in North Carolina by the Division of Environmental Management will be a combined "construction and operation" permit. This change will not require any additional legislation or regulatory revisions.

Should you wish to discuss this situation in further detail, please advise.

Sincerely,

Fin Johnson, Chief

FJ:lb

Attachment

cc: R. Paul Wilms
L. P. Benton
Charlene Crews
Winston Smith
Bill Anderson
Jim Wilburn
Yvonne Bailey
Regional Supervisors
Mike Sewell

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30355

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APR 07 1986

N. O. Gerald, Assistant Chief
Air Quality Section
Division of Environmental Management
Department of Natural Resources and
Community Development
512 North Salisbury Street
Raleigh, North Carolina 27611

Dear Ogden:

This is in response to your proposal to resolve EPA's concern that operation permits issued by your Department are not federally enforceable unless submitted as SIP revisions. You have asked whether a combined construction and operation permit, issued pursuant to existing regulations in the North Carolina SIP, would be federally enforceable and thus obviate the need for submission of the individual permits. It is the opinion of the Office of Regional Counsel that such a combined permit, if authorized by the approved regulations in the North Carolina SIP, would be federally enforceable.

Under 40 C.F.R. Section 52.23, the failure to comply with any permit condition issued pursuant to approved regulations for the review of new or modified stationary sources renders the person so failing to comply in violation of an applicable implementation plan and subject to enforcement action under Section 113 of the Clean Air Act. This section has been construed by EPA to apply to conditions in construction permits, but not operating permits, since 40 C.F.R. Part 51 requires implementation plans to include provisions for approval or disapproval of construction, but not operation, of new or modified sources. So long as the combined permit you propose is issued pursuant to approved regulations for preconstruction review, the inclusion of operating conditions would not negate the fact that the permit is a preconstruction approval

-2-

Section 40 C.F.R. 52.1772(b) does require that new source permits issued by North Carolina pursuant to Clean Air Act Section 173 (major sources in nonattainment areas) be submitted to EPA. However, since the only nonattainment area in North Carolina is Mecklenburg County, and since your Division exercises no air permitting authority in Mecklenburg County, this restriction presents no problem for your Division.

I should note that our opinion that these combined permits would be federally enforceable does not mean that the permitting provisions in the North Carolina SIP meet all of the present requirements in 40 C.F.R. Section 51.18; they do not. See, for example, 40 C.F.R. Section 51.18(h). Therefore our conclusion that the combined permits would be federally enforceable would not preclude EPA from finding that the North Carolina SIP is deficient to the extent it does not meet all of the requirements presently in 40 C.F.R. Section 51.18.

Sincerely,

William D. Anderson
Assistant Regional Counsel